

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

**Item No.** 4  
**Mtg. Date** November 18, 2014  
**Dept.** City Attorney's Office

**Item Title:** **Ordinance No. 426 – Zoning Code Use Interpretations (Marijuana Dispensaries and Collectives Not Permitted Uses)**

**Staff Contact:** James P. Lough, City Attorney

**Recommendation:**

Staff recommends that the City Council introduce Ordinance No. 426.

**Item Summary:**

The State Compassionate Use Act (1996) authorizes the use of medicinal marijuana by individuals with qualifying disabilities. It also allows “qualified patients” and their “primary caregivers” to collectively grow and share marijuana for medicinal purposes only. Cities continue to have land use authority over whether to allow marijuana dispensaries or collectives as permitted uses within any zoning classification. Since there are no zones that allow this use, either as of right or conditionally, marijuana collectives or dispensaries are not allowed within the City. Zoning Code Section 17.28.070 gives authority to the Development Services Director to make determinations whether a particular use fits within a particular zoning category. Ordinance No. 426 finds that marijuana collectives and dispensaries do not fit into any zoning category. This Ordinance also gives the City Council the independent authority to make use classification determinations.

**Fiscal Impact:**

None.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section   | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report
- B. Ordinance No. 426



## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 4

Mtg. Date November 18, 2014

Item Title: **Ordinance No. 426 – Zoning Code Use Interpretations (Marijuana Dispensaries and Collectives Not Permitted Uses)**

Staff Contact: James P. Lough, City Attorney

### Discussion:

The voters of California adopted the Compassionate Use Act (“CUA”) in 1996 allowing “qualified patients” to use medically prescribed marijuana. Individual patients may cultivate marijuana for personal “medicinal” use and not be subject to criminal penalties under California law. “Qualified patients” may also work with their “primary caregivers” to cultivate the marijuana for medicinal purposes.

The CUA also allows “qualified patients” and their “primary caregivers” to “collectively dispense” marijuana for medicinal purposes to those “qualified patients” who are not able to grow their own medical marijuana. How “collectives” and “dispensaries” operate has been an area of contention and much litigation throughout the State.

One issue that has been part of the legal challenges is how much control cities have over their land use authority. Some of the cases raised questions over the land use authority of cities to ban marijuana collectives or dispensaries within their jurisdictions. At this point, the Supreme Court has recognized the authority of cities to exercise control over land use for uses allowed under the CUA (*City of Riverside v. Inland Empire Patients Health & Wellness Center* (2013) 56 Cal. 729, 762.).

The CUA and State implementing legislation do not prevent local land use authority from declaring the establishment of marijuana dispensaries or collectives to be nuisances under local police power (zoning). The California Supreme Court held that the CUA was a preliminary step decriminalizing medicinal marijuana, but it did not preempt local land use controls.

### Background

After adoption of the Compassionate Use Act in 1996, Lemon Grove did not amend its Zoning Code or General Plan to allow marijuana collectives or dispensaries within City boundaries. Lemon Grove’s Zoning Code is typical of most codes in that it “permits” certain uses within various zones. If a “use” is not “permitted” by the terms of the code, it is not allowed. Section 17.12.060 (A) states as follows:

Except as provided in this development code:

A. No building or structure shall be erected and no existing building shall be moved, altered, added to, or enlarged, **nor shall any land, building, or premises be used, or be designated to be used, for any purpose or in any manner**, nor shall any yard or other open space surrounding any building be encroached upon or reduced, **except as permitted by and in conformity to the regulations specified in this chapter for the land use district as set forth in the zoning map, or any amendment thereto.** (*emphasis added*)

# Attachment A

The Zoning Code is a set of regulations that designate what uses are allowed. If a use is not “permitted” by the property’s zoning designation, it cannot be established in that zone. The zoning code allows development in an orderly fashion in accordance with the terms and conditions established under the code and guided by the General Plan. Uses are either allowed by right or with the establishment of specified “conditions.” Uses that may only be appropriate with specific controls in place are allowed based on “conditions” placed on the “use” that are established through procedures established in the Zoning Code.

Over the years, there have been a number attempts to seek approval to locate a marijuana dispensary or collective in Lemon Grove. In June 2009, two separate applications were denied because they were inconsistent with the Heavy Commercial Zone, General Commercial, or Specific Plan Area III. In May 2011, a medical marijuana delivery service was denied as not allowed as a “permitted use.” May 2012 saw another business denied as inconsistent with the General Commercial Zone. A business license was denied in June 2014 as inconsistent with the permitted uses in the General Commercial Zone. None of these cases were appealed to the City Council. However, the Development Services Director, in every instance, was asked to give an interpretation.

The applicants, here and in other cities, often claim that the “use” was a “pharmacy,” “health food” establishment or other similar use to try and fit into an existing zoning category. This required the Development Services Director to analyze the request and give an interpretation. Based on recent case law involving “due process” and the right of an applicant to have a fair hearing, the City Attorney’s office has had to recuse itself because it also represents the City Council who would ultimately serve as the final hearing body. This has required the hiring of outside legal counsel to represent staff, which raises the cost of making the same determination each time based on new theories by applicants.

In November 2012, two land use initiatives (Propositions “Q” and “T”), which would have allowed medical marijuana collectives/dispensaries in certain non-residential zones, were presented to Lemon Grove voters for consideration. Each was voted down with at least a 62 percent “No” vote. These denials by the voters is further indication that medical marijuana collectives/dispensaries should not be allowed in any commercial zone within the City.

Ordinance No 426 (**Attachment B**) is an amendment to the sections dealing with zoning interpretations. Under 17.12.070, it adds a subsection (C) that establishes *that medical marijuana collectives/dispensaries are not and have never been allowed as a permitted or conditional use in any zone in the City.* This clarification will give staff the ability to turn down applications without going through the interpretation process for a “use” that has never been allowed. This will save time and money for both the applicant and City staff. It brings certainty to the process.

Ordinance No. 426 also changes the procedure to allow the City Council to make its own zoning interpretations. (LGMC 17.12.010(F).) Subsection (F) is added to state as follows:

F. As the body that establishes the rules and regulations under this title, the city council may, on its own motion, interpret the scope and meaning of any provision under this title, including the applicability of any provision to a particular person or property. The city council may request the advice on any interpretation from the planning commission, development services director or any other advisory body it has formed, or chooses to form, for this purpose.

## **Attachment A**

This new subsection is not an appellate section, but allows the City Council to, on its own motion, make an interpretation of the applicability of the zoning code to a particular type of use. This would be a separate process from the normal appeal review function in a case where an applicant seeks an interpretation.

### **Conclusion:**

Staff recommends that the City Council introduce Ordinance No. 426 by title only.



## ORDINANCE NO. 426

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA AMENDING SECTIONS 17.12.010 and 17.12.070 OF THE LEMON GROVE MUNICIPAL CODE TO ADD A CITY COUNCIL INTERPRETATION PROCEDURE AND TO RECOGNIZE THAT MARIJUANA COLLECTIVES OR DISPENSARIES ARE NOT A PERMITTED USE IN ANY ZONE**

**WHEREAS**, the voters of the State of California approved the Compassionate Use Act which allowed for the use of medical marijuana under limited circumstances; and

**WHEREAS**, the Compassionate Use Act, and its State implementing legislation, do not limit, preempt or regulate local land use discretion of general law cities authorized under Article XI, Section 7 of the California Constitution; and

**WHEREAS**, at no time since the adoption of the Compassionate Use Act has the City of Lemon Grove allowed medical marijuana dispensaries/collectives as a permitted or conditional “use” in any zone of the City and no staff interpretation has legally allowed such uses within the boundaries of the City; and

**WHEREAS**, the City Council has determined that the recognition of its zoning history and the denial of two local initiatives in November 2012 indicate a consistent intent of the Zoning Code to prohibit medical marijuana collectives/dispensaries within the boundaries of the City of Lemon Grove; and

**WHEREAS**, the City of Lemon Grove recognizes that nothing herein limits the application of the Compassionate Use Act as adopted by the voters, implemented through general laws of the State, and interpreted by the judiciary; and

**WHEREAS**, in order to address potential questions over the interpretation of the use categories in the Zoning Code in the future, the City Council hereby adopts an interpretation procedure that will allow it, on its own motion, to determine whether particular uses are allowed under the terms of the Zoning Code.

**NOW THEREFORE**, the City Council of the City of Lemon Grove does hereby ordain as follows;

1. Section 17.12.010 (Administration) is hereby amended to read as shown in EXHIBIT “1.”

2. Section 17.12.070 (Uncertainty of use classifications) is amended to read as shown in EXHIBIT “1.”

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# Attachment B

## EXHIBIT “1”

### 17.28.010 Administration.

A. Purpose. This section establishes the roles and responsibilities of those empowered and directed to provide application and permit review, render decisions, issue permits, and hear appeals for matters subject to this title. Any application made in conflict with the provisions of the LGMC, state law, or federal law shall be denied.

B. Employees. All departments, officials, and public employees of the city empowered with the duty or authority to issue permits shall conform to the provisions of this title and shall not issue a permit for uses, structures, or purposes in conflict with the provisions of this title, state law, or federal law.

C. Development Services Director. The development services director shall hear and decide applications for the various reviews and permits according to the procedures set forth in this title, and shall also perform such other duties as may be prescribed by ordinance, resolution, or direction of the city council.

D. Planning Commission. The planning commission shall hear and decide applications for the various reviews and permits according to the procedures set forth in this title. The planning commission shall also act as an appellate body, hearing any appeals from the decisions of the development services director.

E. City Council. The city council shall establish rules and regulations for the administration of this title. The city council shall hear and decide applications for the various reviews and permits according to the procedures set forth in this title. The city council shall also act as an appellate body, hearing any appeals from the decisions of the planning commission. The decisions of the city council shall be final in all actions or appeals concerning this title.

F. As the body that establishes the rules and regulations under this title, the city council may, on its own motion, interpret the scope and meaning of any provision under this title, including the applicability of any provision to a particular person or property. The city council may request the advice on any interpretation from the planning commission, development services director or any other advisory body it has formed, or chooses to form, for this purpose.

### 17.12.070 Uncertainty of use classifications.

A. It is recognized that in the development of a comprehensive zoning ordinance, not all uses of land can be listed, nor can all future uses of lands be anticipated. The listings of uses permitted or permitted subject to a conditional use permit in each zone, or subject to a conditional use permit, are illustrative and meant to indicate the types and scales of development intended for each district. A use may have been omitted from the list of those specified as permissible in each of the various districts herein designated, or ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this chapter. Where such uncertainty exists, the planning director shall determine the appropriate classification for any such use.

B. If the development services director believes that the determination of the appropriateness of a particular use in a zone should be made by the planning commission, all pertinent facts shall be transmitted to the planning commission for consideration at its next regular meeting. Any decision of the development services director or planning commission may be appealed pursuant to Section 17.28.020 of this title.

C. No provision of this title allows for the location of a marijuana dispensary or marijuana collective within any zone within the city. No further determination is required by the development services director, planning commission or city council regarding such uses at any



## Attachment B

location within the city. This provision is declarative of existing law in that such uses have never been interpreted to be allowed in the city and this title has not made provision for these uses since the adoption of the Compassionate Use Act by the voters of California in 1996. In November 2012, the voters of the city rejected Propositions "Q" and "T," which would have allowed such uses. Said rejection of these measures is evidence of the intent of the voters to continue the prohibition of marijuana dispensaries or marijuana collectives.